

JUDGE BRODERICK

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ROBERT G. LOPEZ, an individual,

Plaintiff,

v.

REDBUBBLE, INC.

Defendant.

16 CV 10054

Civil Action No.

JURY TRIAL DEMANDED

FILED  
U.S. DISTRICT COURT  
2016 DEC 29 PM 4:04  
S.D. OF N.Y.

**COMPLAINT FOR TRADEMARK INFRINGEMENT,  
UNFAIR COMPETITION AND RELATED CLAIMS**

Plaintiff, Robert G. Lopez, alleges his complaint against Defendant, Redbubble, Inc., as follows:

**NATURE OF THE ACTION**

1. This action arises from Defendant's infringement of Plaintiff's "ownership" and exclusive "use" rights in the mark LES NYC®, LOWER EAST SIDE™ and THE LOWER™, in conjunction with clothing and related goods. Despite Plaintiff being the registered owner of the trademark LES NYC®, LOWER EAST SIDE™ and THE LOWER™ and offering various clothing items under such brand names, the Defendant has infringed Plaintiff's rights in the aforementioned marks by promoting, selling, and offering for sale clothing items under Plaintiff's trademarks. Plaintiff has already experienced "actual confusion" in connection with this matter and is likely to continue to experience confusion as to the affiliation or connection between the Defendant and Plaintiff resulting in the unjust enrichment of Defendant by using Plaintiff's registered trademarks.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1051 *et seq.*, 15 U.S.C. Sections 1114-1116; under Section 43(a) of the Trademark Act, 15 U.S.C. §1125(a) and Section 43(c) of the Trademark Act, 15 U.S.C. §1125(c).

3. This Court has personal jurisdiction over the Defendant because Defendant engages in continuous and significant business activities in, and directed to the State of New York within this judicial district and is registered with the NYS Department of State Division of Corporations to do business in New York and because Defendant has committed tortuous acts aimed at and causing harm within the State of New York and this judicial district.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) because it is where Plaintiff resides and the Defendant transacts business and/or maintains an office or business location in this district, and because a substantial portion of the events giving rise to the asserted claims have occurred, and continue to occur, within this district. Furthermore, the damage to Plaintiff and its intellectual property described herein continues to occur in this judicial district.

### **THE PARTIES**

5. Plaintiff, Robert G. Lopez is an individual residing at 230 Clinton Street, Apt. #11C, New York, NY 10002.

6. Upon information and belief, Defendant Redbubble, Inc. is a Delaware corporation with a principal place of business at 633 Howard Street, San Francisco, California 94105.

### FACTS

7. Since at least as early as 1999, Plaintiff Robert G. Lopez has been selling headwear, t-shirts, sweaters, hooded sweatshirts and other clothing items under the LES NYC® and LOWER EAST SIDE™ brand names.

8. Since at least as early as 1999, Plaintiff has been independently operating a clothing business under the trade name L.E.S. CLOTHING CO.™, which has sold headwear, t-shirts, sweaters, hooded sweatshirts and other related clothing items under the marks LOWER EAST SIDE™, and LES NYC®. Since at least as early as 2010, Plaintiff has also been selling clothing items under the mark LOYALTY EQUALS STRENGTH™.

9. In addition to selling and offering for sale clothing items under the LOWER EAST SIDE™, LES NYC® and LOYALTY EQUALS STRENGTH™ brand names, Plaintiff has also continuously sold and offered for sale various clothing items including hooded sweatshirts and t-shirts which bear the THE LOWER™, LOWER EAST SIDE™ and LES NYC® marks in various font and design styles which are prominently displayed on the front and/or back of the headwear, t-shirts and/or sweaters.

10. Plaintiff sells, and promotes the sale of his clothing via his website [www.lesclothing.com](http://www.lesclothing.com), through order forms, and his t-shirts and sweaters are also available for sale in several retail locations in New York and other States. From 2012 to 2015 Plaintiff also maintained a Flagship LES Clothing Co. store located at 43 Clinton Street, New York, NY 10002.

11. Plaintiff advertises his LES CLOTHING CO.™ LOWER EAST SIDE™, THE LOWER™ and LES NYC® brands and clothing items through flyers, posters, stickers and through grass root street marketing methods such as painted "street murals." Plaintiff also regularly conducts photo shoots of customers who purchase his LOWER EAST SIDE™ and LES NYC® clothing items to be included in magazine advertisements and marketing materials.

12. Plaintiff is the registered owner of United States Trademark Registration No. 4,549,880 for the mark LES NYC®. (See **Exhibit A**).

13. Plaintiff is the registered owner of New York State Trademark Registration No. R31067 and R32849 both for the mark LOWER EAST SIDE™. Plaintiff is also the registered owner of New York State Trademark Registration No. R31773. (See **Exhibit B**).

14. Plaintiff is informed and believes and thereon alleges that Defendant is marketing, promoting, selling and offering for sale a t-shirt bearing Plaintiff's THE LOWER™ mark but is also promoting and advertising various t-shirts and similar items in connection with the LOWER EAST SIDE™ and LES NYC® marks (See **Exhibit C**).

15. Plaintiff was been contacted by several long-standing customer of his LES CLOTHING CO™ LOWER EAST SIDE™ and LES NYC® clothing products regarding the LOWER EAST SIDE™ brand products that are offered and sold at Defendant's thinking the products were sponsored and/or affiliated with Plaintiff and his business LES Clothing Co.

16. Defendant's use of Plaintiff's LOWER EAST SIDE™, THE LOWER™ and LES NYC® brands in connection with clothing has already caused and will continue to cause confusion as to the source or affiliation of the source of the clothing related goods bearing the LOWER EAST SIDE™, THE LOWER™ and LES NYC® marks.

17. Defendants business status as a major retailer of apparel and accessories also has the capability of causing reverse confusion where consumers of clothing products will think that all LOWER EAST SIDE™, THE LOWER™ and LES NYC® clothing related products are sponsored or produced by Defendant.

**FIRST CAUSE OF ACTION**  
**TRADEMARK INFRINGEMENT (15 U.S.C. §§ 1114-1116)**

18. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 17 of this Complaint.

19. The use in commerce by Defendant of an identical and slightly identical version of Plaintiff's registered trademark is likely to cause confusion, mistake and deception among members of the public and in trade as to the source, origin, or sponsorship of defendants' goods and services. Such use by defendant constitutes a clear and direct infringement of Plaintiff's rights in and to Plaintiff's registered trademark, and has resulted in injury and damage to Plaintiff that will continue if Defendant is not ordered to cease all use of the LES NYC® and LOWER EAST SIDE™ marks.

## **SECOND CAUSE OF ACTION**

### **UNFAIR COMPETITION & FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))**

20. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 19 of this Complaint.

21. Plaintiff has the exclusive right to market, brand and provide clothing related goods using the LES NYC® and LOWER EAST SIDE™ marks.

22. Defendant by reason of the aforementioned acts, have falsely described, represented and designated the origin of its goods and services. Defendants' activities already have confused the public into believing that Defendants and Plaintiff's clothing goods and accessories come from one and the same source, and defendants continued activities are likely to create further confusion and deceive the public concerning the source of the goods/services.

23. Defendant have unfairly profited from the actions alleged herein and will continue to unfairly profit and become unjustly enriched unless and until such conduct is enjoined by this Court.

24. By reason of Defendant's willful acts conducted in conscious disregard for Plaintiff's rights, Plaintiff is entitled to treble damages under 15 U.S.C. § 1117(a).

**THIRD CAUSE OF ACTION  
COMMON LAW TRADEMARK INFRINGEMENT & UNFAIR COMPETITION**

25. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 24 of this Complaint.

26. Defendant's conduct constitutes deception by which Defendant goods will be palmed off as those of Plaintiff. Such conduct constitutes trademark infringement and unfair competition in violation of the laws of the State of New York.

27. Defendant's unauthorized use of Plaintiff's LOWER EAST SIDE™ and LES NYC® marks is likely to continue to cause further confusion to the public as to the clothing goods and accessories of the respective parties.

28. By reason of the foregoing, Defendant has infringed and continues to infringe on Plaintiff's common law rights in the LOWER EAST SIDE™, THE LOWER™ and LES NYC® marks and Defendant has become unjustly enriched by such acts of infringement.

29. Defendant's unlawful conduct has been and will continue to be willful or willfully blind to Plaintiff's rights, as Defendant has reason to know of Plaintiff's rights.

**FOURTH CAUSE OF ACTION  
UNJUST ENRICHMENT**

30. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 29 of this Complaint.

31. Defendant has unjustly retained profits from the sale of clothing goods and accessories bearing Plaintiff's LOWER EAST SIDE™ and/or LES NYC® marks.

32. Defendant's actions constitute unjust enrichment.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for relief as follows:

1. Entry of an order and judgment requiring that all defendant, its subsidiaries, officers, agents, servants, employees, owners, and representatives, and all other persons or entities in active concert or participation with them, be preliminarily and, thereafter, permanently enjoined and restrained from (a) using in any manner the trade name, trademark, domain name or other indicia or origin, including in whole or part the term LOWER EAST SIDE™, LES NYC®, or any colorable imitation thereof; (b) advertising, operating a website, using business stationary or offering any goods or services using the trade name, trademark, domain name, URL, or any other indicia of origin including in whole or part the term LES NYC®, or any colorable imitation thereof; (c) otherwise engaging in any acts of unfair competition and infringement which tend to injure Plaintiff's rights in the LES NYC® mark.

2. That Defendant be required to account to Plaintiff for any and all profits derived by it, and to compensate Plaintiff for all the damages sustained by reason of the acts complained of herein, and that the damages herein be trebled pursuant to the Trademark Act.

3. That Defendant be ordered to deliver up for destruction any and all infringing materials bearing the LOWER EAST SIDE™, THE LOWER™ and LES NYC® marks, and any colorable imitation thereof, in whole or part.

4. That Plaintiff be awarded punitive damages.

5. That Defendant be required to place advertisements or send notifications to past and present customers that it improperly has been using the LES NYC® mark.

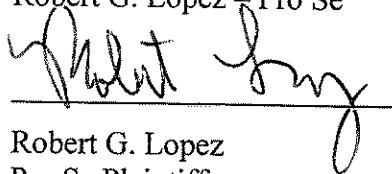
6. That Plaintiff be awarded the cost and disbursements of this action.
7. That Plaintiff have such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all issues.

Dated: December 30, 2016  
New York, New York

Respectfully submitted,  
Robert G. Lopez – Pro Se

A handwritten signature in black ink, appearing to read "Robert Lopez", is written over a horizontal line.

Robert G. Lopez  
Pro Se Plaintiff  
230 Clinton Street – Apt. #11C  
New York, New York 10002  
(917) 868-1698



**EXHIBIT A**

**United States of America**  
United States Patent and Trademark Office

**LES NYC**

**Reg. No. 4,549,880**

**Registered June 17, 2014**

**Int. Cl.: 25**

**TRADEMARK**

**PRINCIPAL REGISTER**

LOPEZ, ROBERT G. (UNITED STATES INDIVIDUAL)  
230 CLINTON STREET - APT. #11C  
NEW YORK, NY 10002

FOR: BASEBALL CAPS AND HATS; HOODED SWEATSHIRTS; SHORT-SLEEVED OR LONG-SLEEVED T-SHIRTS; T-SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 12-0-1999; IN COMMERCE 12-0-1999.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SEC. 2(F).

SER. NO. 85-335,314, FILED 6-1-2011.

ALICE BENMAMAN, EXAMINING ATTORNEY



*Michelle K. Lee*

Deputy Director of the United States  
Patent and Trademark Office

**EXHIBIT B**

## *New York State Department of State Certificate of Trademark Registration*

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*I Daniel E. Shapiro, Special Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.*

*Registration Number:* R31259 *Registration Date:* 05/12/08

*Applicant:* **ROBERT G. LOPEZ**  
230 CLINTON STREET, SUITE #11C  
NEW YORK NY 10002-

*State of Incorporation or  
Partnership Organization:*

*Class Numbers:* 25

*Date First Used in NYS:* 12/1999 *Date First Used Anywhere:* 12/1999

**Trademark Description:**

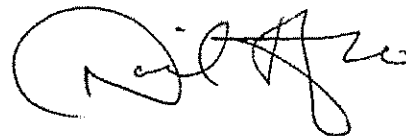
*The mark is comprised of the words LES NYC inside of a circular design made up of stars.*

**Description of Goods:** Clothing, namely; T-shirts, Hooded Sweatshirts, Vest, Hats and Caps as adopted from the USPTO.

**WITNESS** my hand and the seal of the State of New York In  
the City of Albany on this:

Tuesday, June 10, 2008

by:



*Special Deputy Secretary of State*



## ***New York State Department of State Certificate of Trademark Registration***

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***I, Anthony Giardina, Executive Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.***

**Registration Number:** R32849 **Registration Date:** 08/09/16

**Applicant:** **ROBERT G. LOPEZ**  
230 CLINTON ST. - APT. 11C  
NEW YORK NY 10002-

**State of Incorporation or  
Partnership Organization:**

**Class Numbers:** 25

**Date First Used in NYS:** 12/01/1999 **Date First Used Anywhere:** 12/01/1999

**Trademark Description:**

***The mark is comprised of the words LOWER EAST SIDE without claim to any particular font, style or design.***

**Description of Goods:** Clothing, namely; t-shirts, sweaters, shorts and headwear.

**WITNESS** my hand and the seal of the State of New York In  
the City of Albany on this:

Thursday, August 11, 2016

by:



**Executive Deputy Secretary of State**

## ***New York State Department of State Certificate of Trademark Registration***

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*I Daniel E. Shapiro, Special Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.*

**Registration Number:** R31773 **Registration Date:** 11/22/10

**Applicant:** ROBERT G. LOPEZ  
230 CLINTON ST. - APT #11C  
NEW YORK NY 10002-

**State of Incorporation or  
Partnership Organization:**

**Class Numbers:** 25

**Date First Used in NYS:** 03/00/08 **Date First Used Anywhere:** 03/00/08

**Trademark Description:**

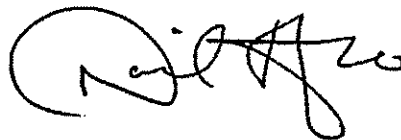
*The mark is comprised of the words "THE LOWER" with five stars appearing beneath the literal element of the mark.*

**Description of Goods:** Clothing, namely; T-shirts, hooded sweatshirts and caps.

**WITNESS** my hand and the seal of the State of New York in  
the City of Albany on this:

**Monday, November 22, 2010**

by:



**Special Deputy Secretary of State**

**EXHIBIT C**

"Lower East Side NYC" Classic T-Shirts by Nathan Tse | Redbubble

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[https://www.redbubble.com/people/nathantse/works/20330653-lower-east-side-nyc?grid\\_pos=12&p=classic-tee](https://www.redbubble.com/people/nathantse/works/20330653-lower-east-side-nyc?grid_pos=12&p=classic-tee)

12/13/2016



The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of filing the civil cover sheet.

16 CV 10054

PLAINTIFFS  
Robert G. Lopez

DEFENDANTS  
Redbubble, Inc.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Robert G. Lopez - Pro Se  
230 Clinton Street - Apt. 11C  
New York, New York 10002

ATTORNEYS (IF KNOWN)

DEC 30 2016

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

15 U.S.C. 1051 Trademark Infringement

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

Is THIS AN INTERNATIONAL ARBITRATION CASE? No ☐ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

- ☐ 110 INSURANCE
- ☐ 120 MARINE
- ☐ 130 MILLER ACT
- ☐ 140 NEGOTIABLE INSTRUMENT
- ☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- ☐ 151 MEDICARE ACT
- ☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
- ☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- ☐ 160 STOCKHOLDERS SUITS
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY
- ☐ 196 FRANCHISE

PERSONAL INJURY

- ☐ 310 AIRPLANE
- ☐ 315 AIRPLANE PRODUCT LIABILITY
- ☐ 320 ASSAULT, LIBEL & SLANDER
- ☐ 330 FEDERAL EMPLOYERS' LIABILITY
- ☐ 340 MARINE
- ☐ 345 MARINE PRODUCT LIABILITY
- ☐ 350 MOTOR VEHICLE
- ☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
- ☐ 360 OTHER PERSONAL INJURY
- ☐ 362 PERSONAL INJURY - MED MALPRACTICE

PERSONAL INJURY

- ☐ 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY
- ☐ 365 PERSONAL INJURY PRODUCT LIABILITY
- ☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY
- ☐ 370 OTHER FRAUD
- ☐ 371 TRUTH IN LENDING
- ☐ 380 OTHER PERSONAL PROPERTY DAMAGE
- ☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY
- ☐ 463 ALIEN DETAINEE
- ☐ 510 MOTIONS TO VACATE SENTENCE
- ☐ 530 HABEAS CORPUS
- ☐ 535 DEATH PENALTY
- ☐ 540 MANDAMUS & OTHER

FORFEITURE/PENALTY

- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY
- ☐ 21 USC 681
- ☐ 690 OTHER

PERSONAL PROPERTY

LABOR

- ☐ 710 FAIR LABOR STANDARDS ACT
- ☐ 720 LABOR/MGMT RELATIONS
- ☐ 740 RAILWAY LABOR ACT
- ☐ 751 FAMILY MEDICAL LEAVE ACT (FMLA)
- ☐ 790 OTHER LABOR LITIGATION
- ☐ 791 EMPL RET INC SECURITY ACT (ERISA)

BANKRUPTCY

- ☐ 422 APPEAL
- ☐ 28 USC 158
- ☐ 423 WITHDRAWAL
- ☐ 28 USC 157

PROPERTY RIGHTS

- ☐ 820 COPYRIGHTS
- ☐ 830 PATENT
- ☒ 840 TRADEMARK

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
- ☐ 862 BLACK LUNG (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID TITLE XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-THIRD PARTY
- ☐ 26 USC 7609

OTHER STATUTES

- ☐ 375 FALSE CLAIMS
- ☐ 376 QUI TAM
- ☐ 400 STATE REAPPORTIONMENT
- ☐ 410 ANTITRUST
- ☐ 430 BANKS & BANKING
- ☐ 450 COMMERCE
- ☐ 460 DEPORTATION
- ☐ 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- ☐ 480 CONSUMER CREDIT
- ☐ 490 CABLE/SATELLITE TV
- ☐ 850 SECURITIES/ COMMODITIES/ EXCHANGE
- ☐ 890 OTHER STATUTORY ACTIONS
- ☐ 891 AGRICULTURAL ACTS
- ☐ 893 ENVIRONMENTAL MATTERS
- ☐ 895 FREEDOM OF INFORMATION ACT
- ☐ 896 ARBITRATION
- ☐ 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES

REAL PROPERTY

- ☐ 210 LAND CONDEMNATION
- ☐ 220 FORECLOSURE
- ☐ 230 RENT LEASE & EJECTMENT
- ☐ 240 TORTS TO LAND
- ☐ 245 TORT PRODUCT LIABILITY
- ☐ 290 ALL OTHER REAL PROPERTY

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- ☐ 440 OTHER CIVIL RIGHTS (Non-Prisoner)
- ☐ 441 VOTING
- ☐ 442 EMPLOYMENT
- ☐ 443 HOUSING/ ACCOMMODATIONS
- ☐ 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
- ☐ 446 AMERICANS WITH DISABILITIES - OTHER
- ☐ 448 EDUCATION

PRISONER CIVIL RIGHTS

- ☐ 550 CIVIL RIGHTS
- ☐ 555 PRISON CONDITION
- ☐ 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

IMMIGRATION

- ☐ 462 NATURALIZATION APPLICATION
- ☐ 465 OTHER IMMIGRATION ACTIONS

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13? IF SO, STATE:

DEMAND \$ YES OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint  
JURY DEMAND: ☒ YES ☐ NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).